THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 20017 OF 1996

Date: 04.04.2007

Between:

K. Janardhana Rao.

.... Petitioner

and

The Secretary, Manasas Fort, Vizinagaram District and two others.

... Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 20017 OF 1996

ORDER:

The action of the respondents in not permitting him to join duty in the first respondent trust is questioned by the petitioner in this writ petition as arbitrary and illegal.

The petitioner was appointed as a clerk in 'Manasas' Trust on 05.08.1978 and worked in various capacities for nine years. He claims to have abstained from duty on account of his ill-health, to have undergone treatment from 11.12.1985 to 03.01.1986 and to have applied for leave on medical grounds. The second respondent, vide proceedings dated 03.01.1986, called upon the petitioner to submit a fitness certificate from the District Medical Officer, Vizianagaram. The petitioner submitted a fitness certificate from a private doctor and requested that he be permitted to join duty on 04.01.1986. He stated that it was not necessary that a medical fitness certificate be submitted only from the District Medical Officer, Vizianagaram. The second respondent issued memo dated 04.01.1986 informing the petitioner that, as per the procedure prescribed, a medical certificate issued by the District Medical Officer, Vizianagaram could only be accepted. According to the petitioner, though the second respondent claims to have referred his case to the District Medical Officer, he did not receive any intimation from the District Medical Officer to appear before him for medical examination.

The petitioner was issued charge memo dated 29.11.1986 alleging that he was frequently abstaining from duty, that he had overstayed beyond 31.12.1985 without applying for leave and that he had failed to appear before the District Medical Officer for medical examination. In his explanation dated 08.08.1986 the

petitioner denied all the charges. The petitioner was informed, vide memo dated 25.01.1988, that an Advocate Sri S.S.S.V.M.R. Raju, was appointed as the enquiry officer. According to the petitioner, while an enquiry was conducted, he was not given a copy of the enquiry report. In his representation dated 06.10.1993 the petitioner informed the second respondent that he was not informed of the contents of the enquiry report. In reply thereto, vide proceedings dated 16.10.1993, the second respondent informed the petitioner that his appointment was lost and was self-terminated and that his claim for arrears was unsustainable. The petitioner claims to have submitted several representations to the second respondent and, eventually, in reply to his representation dated 25.03.1996 the first respondent, vide proceedings dated 22.04.1996, informed him that his services were terminated on various grounds in proceedings dated 16.10.1993. It is this action of the respondents which is impugned in this writ petition as arbitrary, illegal and in violation of principles of natural justice.

Petitioner would contend that the Manasas Trust was initially registered under the Societies Registration Act and, thereafter, under Section 38 of Act 17 of 1966 in the year 1973, that the third respondent had included Manasas Trust in the list published under Section 6(a)(i) of Act 30 of 1987, that in view of the orders issued by the Government, the Commissioner of Endowments i.e., the third respondent is the Controlling Authority in all matters of Manasas Trust including the services of employees working in the Trust, that due to illness he was compelled to apply leave from 11.12.1985 to 03.01.1986, that he

was initially granted leave upto 23.12.1985 and when he reported for duty and submitted a representation along with a medical fitness certificate issued by Dr. G.V. Ramanamurthy Raju, the first respondent, vide memo dated 03.01.1986, had directed him to submit a fitness certificate from the District Medical Officer, Vizianagaram. According to the petitioner, on receipt of the said memo he had submitted a detailed representation dated 03.01.1986 requesting respondents 1 and 2 to permit him to join duty on 04.01.1986 on the strength of the fitness certificate given by Dr. G.V. Ramanamurthy Raju. He further stated that the second respondent, vide memo dated 04.01.1986, had informed him that a reference had been made to the District Medical Officer, Vizianagaram, requesting him to fix a date for the petitioner's medical examination and to submit a report. The petitioner would deny the averments in the counter affidavit that he was asked to appear before the District Medical Officer who in turn would communicate to him the date of his appearance for medical examination. Petitioner would submit that the enquiry officer, in his report, had held that respondents 1 and 2 had miserably failed to prove the charges levelled against him and that a copy of the enquiry report was neither furnished to him by the enquiry officer nor by respondents 1 and 2. Petitioner would contend that the respondents had deliberately suppressed the findings in the enquiry report which were in his favour. Petitioner would contend that no action was taken pursuant to the enquiry report, that no order of termination was passed by the respondent authorities and, since he had come to know that the charges levelled against him

were held not to have been established, and the enquiry officer in his report had held in his favour, he was under the impression that the first respondent would drop further action and issue orders permitting him to join duty. Petitioner would submit that, as a result of several representations, including the representation dated 06.10.1993, the respondents had eventually issued proceedings dated 16.10.1993 informing him that his appointment was lost and self-terminated. Petitioner would submit that he had addressed several letters, including the letter dated 25.03.1996, informing the respondents that the said letter dated 16.10.1993 was vague, that he was not served a copy of the enquiry report, that he be furnished a copy of the enquiry report and other documents, and that the respondents, vide letter dated 22.04.1996, had informed him that no further correspondence should be made as the petitioner's services were self-terminated. Petitioner would contend that the respondents did not take any action on the enquiry report and, despite his repeated requests, the respondent had chosen not even to serve a copy of the enquiry report till date and that, with great difficulty, he was able to procure a copy of the enquiry report. Petitioner would reiterate that, since no order of termination was passed, the question of filing an appeal to higher authorities did not arise nor was there any delay in filing the present writ petition. Petitioner would contend that he is legally entitled for a copy of the enquiry report before any further action was taken against him, that non-supply of the enquiry report caused prejudice, that the action of the respondents in not permitting him to join duty is illegal, arbitrary and contrary to law.

Petitioner would emphasise that the respondents had deliberately and wantonly suppressed the findings of the enquiry officer and had filed their counter affidavit with incorrect averments.

In the counter-affidavit filed on behalf of respondents 1 and 2, by the Assistant Commissioner and Executive Officer of the Manasas Trust, Vizianagaram, it is stated that the writ petition is not maintainable. Respondents would submit that the second respondent Trust was registered, under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966, on 19.05.1973. According to the respondents the petitioner was frequently applying for medical leave and, since the petitioner went on medical leave from 11.12.1995 to 03.01.1996, he was directed, as per procedure, to obtain a medical fitness certificate from the District Medical Officer, Vizianagaram and was informed that the certificate produced by him from a private doctor could not be entertained as per the service code. According to the respondents, the petitioner was required to appear before the District Medical Officer, Vizianagaram who in turn was required to communicate the date on which he was required to appear for medical examination. The District Medical Officer, in his letter dated 08.07.1986, is said to have intimated the non-appearance of the petitioner. Respondents would deny the allegation that the petitioner was not intimated by the District Medical Officer, Vizianagaram regarding his being required to appear for medical examination. It is stated that, in view of the earlier conduct and disobedience, a charge memo was issued to the petitioner and, as his explanation was found unsatisfactory, an Advocate was

appointed as the enquiry officer, that after giving due notice to both the parties the enquiry was conducted wherein both the parties were given reasonable opportunity of being heard and that a copy of the enquiry report was also sent to the petitioner by the enquiry officer and was returned unserved as the petitioner was not available. Respondents would deny the allegation that the petitioner was denied an opportunity by the enquiry officer or that he was not furnished a copy of the enquiry report. According to the respondents, the petitioner was informed, vide letter dated 16.10.1993, a copy of which he received on 20.10.1993, that his services were self-terminated. According to the respondents, consequent to the order dated 16.10.1993, the petitioner was no longer in the service of the respondent institution. Respondent would submit that, since the petitioner's services were self-terminated for his not joining duty, he did not have any legal right to claim reinstatement. They would also contend that, while the action of respondents 1 and 2 in not permitting him to report for duty, arose on 03.01.1986, the writ petition was filed more than a decade thereafter in August, 1996 and that no reasonable explanation has been furnished by the petitioner for the inordinate delay in approaching this Court and the writ petition was, therefore, liable to be dismissed on the ground of delay and latches. Respondents would contend that the petitioner has an effective alternative remedy by way of an appeal to the Deputy Commissioner of Endowments and, on this ground also, the writ petition is liable to be dismissed.

Sri M. Rama Rao, learned Counsel for the petitioner, would

contend that all the colleges run by the Manasas Trust are aided colleges. He would submit that, since the Trust was registered as a Charitable Institution under A.P. Act 17 of 1966, the Commissioner of Endowments, under Section 8 of Act 30 of 1987, exercises overall supervision and control including control over employees of the Trust. Learned Counsel would refer to certain proceedings where the directions issued by the Commissioner, with regards employees of the Manasas Trust, had been complied with. Learned Counsel would place reliance on Section 32 of A.P. Act 17 of 1966, and Section 37 of Act 30 of 1987, to contend that it is only after following the procedure, and for reasons to be recorded in writing, could a penalty be imposed, on officers and servants attached to a charitable institution, for breach of trust, misappropriation, disobedience of orders, misconduct etc. Learned Counsel would submit that since disciplinary action was initiated against the petitioner, an enquiry was held and the enquiry officer had submitted a report holding the petitioner not guilty of the charges, the action of the respondents in issuing proceedings dated 16.10.1993, that the services of the petitioner were self-terminated, was illegal and ultravires the provisions of Ac 30 of 1987. Learned Counsel would contend that the respondents had suppressed material facts, more particularly the fact that the enquiry officer had absolved the petitioner of all the charges. Learned Counsel would refer to the office holders and punishment Rules, 1987, (notified in G.O.Ms. No. 830 dated 18.08.1989), and to the rules in G.O.Ms. No. 1478 dated 17.11.1986. While conceding absence of a specific challenge to the proceedings

dated 16.10.1993, learned Counsel would submit that this Court could always mould the relief. He would rely on **Food Corporation of India Vs. S.N. Nagarkar**[1], **State of Haryana Vs. O.P. Gupta**[2] and **Paluru Ramkrishnaiah Vs. Union of India**[3] in this regard. Learned Counsel would contend that the respondents cannot take advantage of their own wrong, in not taking further action pursuant to the enquiry report and in passing an ex facie arbitrary and illegal order, to contend that the petitioner was disentitled to claim relief on the ground of delay and latches. Learned Counsel would rely on **Ram Chand Vs. Union of India**[4] in this regard. On the question of maintainability of the writ petition, learned Counsel would refer to various provisions of the A.P. Charitable and Hindu Religious Institutions & Endowments Act, 1987, (Act 30 of 1987) to contend that since the Act applies only to public charitable trusts the Manasas Trust, which was registered under the Endowments Act, was a public trust and its activities, including the service conditions of its employees, fell in the public law domain. Learned Counsel would place reliance on **Deoki Nandan Vs. Murlidhar**[5] and **Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi**[6]. Learned Counsel would submit that while the Government had the power, under Section 154, to exempt the Trust from the operation of the provisions of the Act and the Rules made thereunder, no such exemption was granted and as such the Commissioner of Endowments continued to exercise supervision and control over the Trust. Learned Counsel would submit that the Executive

Officer of the Trust is appointed by the Government, that his salary and allowances are initially paid from out of the consolidated fund of the State and later recovered from the respondent-trust and, in view of Section 29(5) read with Section 15 of Act 30 of 1987, the respondent Trust was a public Trust and a writ petition was maintainable thereagainst.

Sri P.V.S.S. Rama Rao, learned Counsel for the respondent Trust, would contend that it was for the first time on 30.12.1996 that an executive officer was appointed, by which time the writ petition had already been filed, that mere registration under the Endowments Act did not make the respondent Trust an instrumentality of the State under Article 12 of the Constitution of India and, at best, it was only after 30.12.1996, when the Executive Officer was appointed by the Government, was a writ petition maintainable against the respondent trust. Learned Counsel would contend that employment between the respondent Trust and the petitioner was contractual in nature and was in the private law realm and not in the public law domain and that the impugned order dated 16.10.1993, whereunder the petitioner was informed that his services had been self-terminated, was akin to voluntary abandonment of service. Learned Counsel would submit that the order dated 16.10.1993 had not even been challenged in the present writ petition and as such this Court was not required to examine its validity. Learned Counsel would contend that, since the petitioner questions the action of the respondents in not permitting him to join duty from 04.01.1986, there is an inordinate and unexplained delay of ten years in invoking the extra-ordinary

jurisdiction of this Court under Article 226 of the Constitution of India and the writ petition was, therefore, liable to be dismissed on the ground of delay and latches. Learned Counsel would contend that the petitioner has an effective alternative remedy under Act 30 of 1987. Learned Counsel would place reliance on **Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology**[7], **Federal Bank Ltd. Vs. Sagar Thomas**[8], **Binny Ltd Vs. Sadasivan**[9], **A. Subrahmanyam Naidu Vs. Government of Andhra Pradesh**[10] and **Mani Enterprises Vs. Vasavi Co-operative Union Bank Limited, Hyderabad**[11].

On the question, whether the writ petition is maintainable against the first respondent charitable Trust, it must firstly be examined whether "**Manasas trust**" is an instrumentality of the "State" under Article 12 of the Constitution of India. To determine this question it must be examined in each case whether, in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within the meaning of Article 12. On the other hand, when the control is merely regulatory, whether under a statute or otherwise, it would not serve to make the body a State. **(Pradeep Kumar**[7]). The regulatory provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) apart, the State Government does not exercise financial, functional

or administrative control over the "**Manasas Trust**" and it is, therefore, not an instrumentality of the "**State**" under Article 12 of the Constitution of India.

But, then, even if a private body is discharging public functions, and the denial of the right claimed is in connection with a public duty imposed on such a body, the public law remedy under Article 226 of the Constitution of India would still be available. It is well settled that the remedy under Article 226 of the Constitution of India is, pre-eminently, a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. A writ of mandamus can, under certain circumstances, be issued against a private body, which is not a State within the meaning of Article 12 of the Constitution, and such a body would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India. But there must be a public law element and the extra-ordinary jurisdiction under Article 226 is not, ordinarily, exercised to enforce purely private contracts entered into between the parties. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function, and the denial of any right is in connection with a public duty imposed on such body, the public law remedy can be invoked. The duty cast on the public body may be either statutory or otherwise. While the source of such power is immaterial there must, nonetheless, be a public law element in

such action. (**Binny Ltd**[9]).

Sri M. Rama Rao, learned Counsel for the petitioner, would contend that the repealed Act 17 of 1966 and the present Act 30 of 1987 govern` only Public Charitable Institutions and Endowments and, since the first respondent has been established for a charitable purpose and is a charitable institution under Section 6(a)(1) of Act 30 of 1987, a writ petition would lie against it. The distinction between a private and a public trust must be borne in mind. Whereas in the former the beneficiaries are specific individuals, in the latter they are the general public or a class thereof. While in the former the beneficiaries are persons who are ascertained, or capable of being ascertained, in the latter they constitute a body which is incapable of ascertainment. By public, it must be understood, are such as are constituted for the benefit either of the public at large or of some considerable portion of it answering a particular description. To this class belong all trusts for charitable purposes. Public trusts and charitable trusts may be considered synonymous expressions. In private trusts the beneficial interest is vested absolutely in one or more individuals who are, or within a certain time may be, definitely ascertained. (**Deoki Nandan**[5]).

Since “Manasas Trust” has been constituted for the benefit of the public at large, and is a charitable trust, it would fall under the category of a public trust. Would a writ petition lie against a public charitable institution even where it relates to action taken by it against its employees? If the nature of employment, between

the petitioner herein and the respondent Trust, is contractual in nature and is in the private law realm would a writ petition lie for its breach?

It is often difficult to distinguish between public law and private law remedies. A public authority has a public or statutory duty to perform and it performs those duties, and carries out its transactions, for the benefit of the public and not for private profit. There cannot be any general definition of public authority or public action. The facts of each case decide the point. (**Binny Ltd**[9], **Halsburys Laws of England**[12]). In **Chairman, Railway Board Vs. Chandrima Das (MRS)**[13] the Supreme Court noted its earlier decisions and observed:-

".....The distinction between public law and private law was considered by a three-Judge Bench of this Court in *Common Cause, A Regd. Society* v. *Union of India: (1999) 6 SCC 667* in which it was, inter alia, observed as under:

".....Under Article 226 of the Constitution, the High Court has been given the power and jurisdiction to issue appropriate writs in the nature of mandamus, certiorari, prohibition, quo warranto and habeas corpus for the enforcement of fundamental rights or for any other purpose. Thus, the High Court has jurisdiction not only to grant relief for the enforcement of fundamental rights but also for any other purpose which would include the enforcement of public duties by public bodies. So also, the Supreme Court under Article 32 has the jurisdiction to issue prerogative writs for the enforcement of fundamental rights guaranteed to a citizen under the Constitution.

Essentially, under public law, it is the dispute between the citizen or a group of citizens on the one hand and the State or other public bodies on the other, which is resolved. This is done to maintain the rule of law and to prevent the State or the public bodies from acting in an arbitrary manner or in violation of that rule. The exercise of constitutional powers by the High Court and the Supreme Court under Articles 226 and 32 has been categorised as power of judicial review. Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of fundamental rights guaranteed by the Constitution. With the expanding horizon of Article 14 read with other articles dealing with

fundamental rights, every executive action of the Government or other public bodies, including instrumentalities of the Government, or those which can be legally treated as authority within the meaning of Article 12, if arbitrary, unreasonable or contrary to law, is now amenable to the writ jurisdiction of this Court under Article 32 or the High Courts under Article 226 and can be validly scrutinised on the touchstone of the constitutional mandates."

The earlier decision, namely, *LIC of India* v. *Escorts Ltd.: AIR 1986 SC 1370* in which it was observed as under:

"Broadly speaking, the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances."

was relied upon.

Various aspects of the public law field were considered. **It was found that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The public law remedies have also been extended to the realm of tort.** This Court, in its various decisions, has entertained petitions under Article 32 of the Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Government……". (emphasis supplied)

In **Sri Konaseema Co-operative Central Bank Ltd Vs. N. Seetharama Raju**[14], a Full Bench of this Court observed:-

"**Distinction between 'public law' and 'private law**':

Difficult as this distinction is and incapable of precises demarcation, it is yet necessary to keep the broad distinction in mind. Lord Denning in his book. "The Closing Chapter" has this to say on the subject:

"The first thing to notice is that public law is confined to 'public authorities'. What are 'public authorities'? There is only one avenue of Approach. It is by asking, in the words of Section 31(2)(b) of the Supreme Court Act 1981: What is the 'nature of the persons and bodies against whom relief may be granted b y such orders', that is, by mandamus, prohibition or certiorari?

These are divided into two main categories:

First, the persons or bodies who have legal authority to determine questions affecting the common law or statutory rights or obligations of other persons as individuals. That is the formula stated by Lord Justice Atkin in R. Vs. Electricity Commissioners, ex parte London Electricity Joint Committee Co., (1920) Ltd, (1924) 1 KB 171/205 as broadened by Lord Diplock in O'Reilly Vs. Mackman (1982)3, WLR 1096/1104).

Second, the persons or bodies who are entrusted by Parliament with functions, powers and duties which involve the making of decisions of a public nature…….To which I would add the words of Lord Goddardm ,C.J. in R. Vs. National Joint Council for Dental Technicians, ex parte Neate (1953) 1 QB 704/707):

"The bodies to which in modern times the remedies of these prerogative writs have been applied to have all been statutory bodies on whom Parliament has conferred statutory powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction".

But those categories are not exhaustive. The courts can extend them to any other person or body of a public nature exercising public duties which it is desirable to control b y the remedy of judicial review…..

……..Sir Harry Woolf, a Lord Justice of Court of Appeal, points out the distinction in the following words:-

"I regard public law as being the system which enforces the proper performance by public bodies of the duties which they owe to the public. I regard private law as being the system which protects the private rights of private individuals or the private rights of public bodies. The critical distinction arises out of the fact that it is thepublic as a whole, or in the case of local government the public in the locality who are the beneficiaries of what is protected by public law and it is the individuals or bodies entitled to the rights who are the beneficiaries of the protection provided by private law……".

(see page 221 of his Article "Public Law Private Law: Why the Divide? A personal View (published in "Public Law" Summer: (1986)"). …..

…….**Moreover, even if for some distant reason it can be characterised as a public body, even so the contract of service between it and the writ petitioner cannot be treated as belonging to 'public law' field. It is a pure and simple contract of service, and there is no statutory provision regulating, circumscribing, and governing the said relationship excepting Section 47 of the A.P. Shops and Establishments Act, 1988, which imposes certain restrictions in the matter of termination of service of the employees of a co-operative society**……..

……..**It would be evident that these statutory restrictions are placed upon the employer's power of termination not only in the interest of employees, but also in public interest. It follows, therefore, that where the mandatory requirements of Section 47 are not complied with, this Court may, in appropriate cases, interfere by way of writ petition, and quash the termination. In several cases, the Supreme Court and this Court have quashed termination where it was effected in violation of the said provisions. Ordinarily, the parties ought to pursue the remedies provided by the Act and the Rules; but, in appropriate**

cases this Court can also interfere, notwithstanding that the employee has not chosen to avail of the remedies provided by the statute. In which cases, and in what circumstances would this Court interfere should be left to its judgment and discretion, to be exercised having regard to the facts of a given case……..” (emphasis supplied)

A private body, or a person, may be amenable to the writ jurisdiction of the High Court to enforce statutory obligations or obligations of a public nature. A writ may issue to private bodies where statutes fasten certain duties and responsibilities on them which need to be complied with. A writ can certainly be issued to ensure compliance of statutory provisions. (**Federal Bank Ltd**[8]). In **Konaseema Co-operative Central Bank Ltd**[14], while holding that the contract of service between the bank and the petitioner was not in the public law domain, the Full bench of this Court held that, where statutory restrictions are placed upon the employer’s power of termination such as those under Section 47 of the A.P. Shops and Establishments Act which are not only in the interest of the employees but also in public interest, this Court, in appropriate cases, could interfere by way of a writ petition and quash the order of termination.

In the present case Section 32 of the repealed A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (A.P. Act 17 of 1966), and Section 37 of Act 30 of 1987 relate to punishment of office holders and servants. Section 32(1) of Act 17of 1966 and Section 37(1) of Act 30 of 1987 read thus:

32. Punishment of office-holders and servants:-

(1). All office-holders and servants attached to a charitable or religious institution or endowment or in receipt of any emolument or perquisite

therefrom shall, whether the office or service is hereditary or not, be under control of the trustee; and the trustee may, after following the prescribed procedure and for reasons to be recorded in writing, impose fine, or orders suspension, removal, dismissal or any other prescribed penalty, on any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under this Act or other sufficient cause:

37. Punishment of office holders and servants:-

(1) All office-holders and servants attached to a charitable or religious institution or endowment, shall be under the control of the trustee; and the trustee may, after following the prescribed procedure and for reasons to be recorded in writing, impose fine, or order suspension, removal, dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under this Act or other sufficient cause.

Both Section 32 of the repealed Act 17 of 1966 and Section 37 of the present Act 30 of 1987 empower the trustee to pass orders of removal, dismissal or any other penalty for breach of trust, misappropriation, incapacity and disobedience of orders, misconduct, violation of the code of conduct laid down or for neglect of duty. The power to impose punishment can be exercised only after following the prescribed procedure and upon reasons being recorded in writing. Section 2(19) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987) defines “prescribed” to mean prescribed by rules made by the Government under the Act. No such procedure, prescribed by way of rules for imposition of punishment, has been brought to the notice of this Court. Even in the absence of a procedure being prescribed by way of statutory rules, it is well settled that principles of natural justice must be read into the unoccupied interstices of statutory provisions. (**Institute of**

Chartered Accountants of India Vs. L.K. Ratna[15], **C.B. Gautam Vs. Union of India**[16]) and as such any punishment imposed, in violation of principles of natural justice, would be illegal.

The petitioner was issued charge memo dated 29.11.1986 alleging that he was frequently abstaining from duty, that he had overstayed beyond 31.12.1985 without applying for leave and that he had failed to appear before the District Medical Officer for medical examination. It is the specific case of the petitioner that he was unwell, that he had undergone treatment from 11.12.1985 to 03.01.1986 and when he reported for duty on 03.01.1986 he was not permitted to join duty and was directed to produce a fitness certificate from the District Medical Officer. According to the petitioner, since he had produced a medical certificate from a private doctor, it was not necessary for him to again obtain a fitness certificate from the District Medical Officer. A charge memo was issued to the petitioner and the respondent trust appointed an enquiry officer on 25.01.1988 to enquire into these charges. Petitioner would contend that the enquiry officer submitted a report holding him not guilty of the charges. The respondent, without taking any further action on the enquiry report, however, issued proceedings dated 16.10.1993 informing the petitioner that his services were self-terminated.

Having chosen to conduct an enquiry, and after receipt of a copy of the enquiry report, the respondent trust was required either to agree or disagree with the findings of the enquiry officer and thereafter take disciplinary action against the petitioner,

including, if need be, imposition of any of the punishments prescribed under Section 37 of Act 30 of 1987, in accordance with law. It was not open to them to give a go by to the disciplinary proceedings initiated against the petitioner merely for the reason that the enquiry officer had, in his report, held him not guilty of the charges leveled against him and to hold, in its proceedings dated 16.10.1993, that the petitioner's services were self-terminated. The proceedings dated 16.10.1993, in effect, is an order terminating the services of the petitioner as a measure of punishment which order could only have been passed after complying with principles of natural justice and after recording reasons as required both under Section 32 of the earlier Act 17 of 1966 and under Section 37 of the present Act 30 of 1987. It defies reason that the respondents, having required the petitioner to submit a medical fitness certificate from the District Medical Officer, having chosen to initiate disciplinary action against him and having prevented him from joining duty when he reported on 03.01.1986, would turn around and contend, in its proceedings dated 16.10.1993, that the petitioner's services were self-terminated. The mandatory requirements of Section 37 of Act 30 of 1987, which are not only in the interest of the employees of the Trust but also in larger public interest, have been flagrantly violated. A writ of mandamus can certainly be issued to compel the respondent trust to comply with Section 37 of Act 30 of 1987.

Sri P.V.S.S. Rama Rao, learned Counsel for the respondent, would contend that the petitioner has an alternative remedy under the provisions of the Endowments Act without exhausting which he

ought not to be permitted to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The jurisdiction of the High Court under Article 226 is not curtailed by the existence of an alternative remedy although, as is well established, the existence of such a remedy would be a factor which the Court would take into consideration while exercising its discretion to issue a writ. (**Asha Prasad. Vs. Chandrakant Gopalka**[17]). Under Article 226 of the Constitution the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. It has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, it would not, ordinarily, exercise its jurisdiction. Existence of such a remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review in certain cases. (**A.N. Venkateswaran v. Ramchand Sobhraj Wadhwani**[18], **S.J.S. Business Enterprises (P) LTD. Vs. State of Bihar**[19]). Alternative remedy does not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is under challenge. (**Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai**[20]; **Sanjana M. Wig Vs. Hindustan Petroleum Corpn. Ltd**[21]; **State of H.P. Vs. Gujarat**

Ambuja Cement Ltd[22] and **L.K. Verma. Vs. HMT Ltd.**[23]). When a writ petition is admitted, rule nisi is issued and the matter is pending before the High Court for a considerable period, it should not, ordinarily, be dismissed on the ground of availability of an alternative remedy. (**Vinayak Wines Vs. Commercial Tax Officer**[24]). I see no reason, therefore, to non-suit the petitioner on the ground of existence of an alternative remedy.

Sri P.V.S.S. Rama Rao, learned Counsel for the respondent, would contend that even if the averments in the writ petition, that the petitioner was prevented from attending duty from 03.01.1986 onwards, were accepted as true, since he had invoked the jurisdiction of this Court, more than a decade thereafter, in the year 1996, the writ petition was liable to be dismissed on the ground of inordinate delay and latches. It is necessary, in this context, to note that the respondents, after directing the petitioner to submit a fitness certificate issued by the District Medical Officer before he was permitted to join duty, had initiated disciplinary action against him issuing a charge memo and appointing an enquiry officer in 1988. After conducting an enquiry, the enquiry officer is said to have submitted his report in the year 1990, holding the petitioner not guilty of the charges leveled against him. Three years thereafter, the respondent issued proceedings dated 16.10.1993 informing the petitioner that his services were self-terminated. As such the petitioner cannot be held guilty of inordinate delay or laches in invoking the jurisdiction of this Court in the year 1996.

Even otherwise, the rule which says that the Court may not enquire into belated and stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party, on the ground of laches or delay, is denied is that the rights which have accrued to others, by reason of the delay in filing the petition, should not be allowed to be disturbed unless there is a reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to undue laches or negligence on his part. The test is not to the physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. (**Dehri Rohtas Light Rly.Co. Vs. District Board**, **Bhopur**[25]).

The question of delay in invoking the writ jurisdiction of the High Court under Article 226 has to be considered along with the inaction, on the part of the authorities, in performing their statutory duties. Can the respondents be heard to say that their failure to perform their duty, or fulfil their statutory obligations, within a reasonable time, is of no consequence as the person, who has been wronged or deprived of his right, has not invoked the jurisdiction of the High Court for a suitable writ or direction to grant the relief considered appropriate in the circumstances? Where the

authorities are enjoined by a statute to perform their duties they are answerable to the Court why such duties have not been performed by them, which has caused injury to the person who has invoked its jurisdiction, albeit belatedly. (**Ram Chand**[4]).

Having failed to perform its statutory obligations, under Section 37 of Act 30 of 1987, it is not open to the respondents to turn around and contend that, despite their having violated the aforesaid statutory provisions, the petitioner could be denied relief on the ground of delay and latches. Even otherwise, as no third party rights have accrued by reason of the delay in filing the writ petition, the plea of delay and latches must also fail.

Sri P.V.S.S. Rama Rao, learned Counsel for the respondent, would contend that, since the petitioner has not chosen to challenge the proceedings dated 16.10.1993 it was not for this Court to examine its validity. It is true that there is no specific challenge to the proceedings dated 16.10.1993. It must, however, not be lost sight of that in exercise of its writ jurisdiction, the High court has the power to mould the relief having regard to the facts of the case and interest of justice. (**S.N. Nagarkar**[1]).

What should be the relief which the petitioner should be granted? Under Section 8(1), of Act 30 of 1987, the administration of all charitable institutions is under the general superintendence and control of the Commissioner of Endowments and such superintendence and control includes the power to pass any order, which may be deemed necessary, to ensure that such institutions are properly administered. The power of superintendence and control, conferred on the Commissioner, under Section 8(1), is

subject to the other provisions of the Act and the Commissioner is statutorily bound to ensure that the charitable institutions, over which he exercises general superintendence and control, are properly administered in accordance with the provisions of Act. As such, for violation of the mandatory requirements of Section 37 of Act 30 of 1987, the Commissioner, in exercise of his powers of general superintendence and control under Section 8(1), can pass orders ensuring compliance thereto by the respondent charitable Trust. Ends of justice would be met if the petitioner is permitted to submit a detailed representation in this regard to the third respondent within a period of four weeks from the date of receipt of a copy of this order and the third respondent Commissioner of Endowments is directed to take necessary action thereupon, in accordance with law, for violation by the respondent trust of Section 37 of Act 30 of 1987. The entire exercise in this regard shall be completed within a period of three months from the date of receipt of the petitioner's representation. The writ petition is disposed of accordingly. However, in the circumstances, without costs.

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Date: .04.2007 RAMESH RANGANATHAN, J

MRKR

[1] 2002 (2) SCC 475

[2] 1996(7) SCC 533

[3] 1989(2) SCC 541

[4] 1994(1) SCC 44

[5] AIR 1957 SC 133, *Lewin on Trusts*, 15th Edn

[6] AIR 1960 SC 100

[7] 2002(5) SCC 111

[8] 2004(1) LLJ 161

[9] 2005(6) SCC 657

[10] 2005(5) ALD 682

[11] 2004(2) ALD 501

[12] 3rd Edn., Vol. 30, p. 682, 1317

[13] 2000(2) SCC 465

[14] AIR 1990 AP 171

[15] AIR 1987 SC 91

[16] 1993(1) SCC 78

[17] 2003(12) SCC 347

[18] AIR 1961 SC 1506

[19] 2004(7) SCC 166

[20] 1998(8)SCC 1

[21] (2005)8 SCC 242

[22] (2005) 6 SCC 499

[23] 2006(2) SCC 269

[24] 1990(2) ALT 121

[25] 1992 (2) SCC 598